

## § 401.91

of this subpart may appeal any final Commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of final Commission action.

### **Subpart G—Penalties and Settlements in Lieu of Penalties**

SOURCE: 52 FR 37602, Oct. 8, 1987, unless otherwise noted.

#### **§ 401.91 Scope of subpart.**

This subpart shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this subpart, person shall include person, partnership, corporation, business association, governmental agency or authority.

#### **§ 401.92 Notice to possible violators.**

Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these rules and section 14.17 of the Compact. The notice to the possible violator shall:

- (a) Set forth the date on which the possible violator shall respond; and
- (b) Set forth any information to be submitted or produced by the possible violator.

#### **§ 401.93 The record for decision-making.**

(a) *Written submission.* In addition to the information required by the Commission, any possible violator shall be entitled to submit in writing any other information that it desires to make available to the Commission before it shall act. The Executive Director may require documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions from any other persons as to whether a

## 18 CFR Ch. III (4–1–00 Edition)

violation has occurred and the adverse consequences resulting from a violation of the Commission's Compact or its rules, regulations and orders.

(b) *Presentation to the Commission.* At the date set in the Notice, the possible violator shall have the opportunity to supplement its written presentation before the Commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the Commission or its staff or to the statements submitted by persons affected by the possible violation.

#### **§ 401.94 Adjudicatory hearings.**

(a) An adjudicatory hearing, which may be in lieu of or in addition to proceedings pursuant to § 401.93 at which testimony may be presented and documents received shall not be scheduled unless:

- (1) The Executive Director determines that a hearing is required to have an adequate record for the Commission; or
- (2) The Commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the possible violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in section 14.4(b) of the Compact but may be waived by the Executive Director.

(c) Except to the extent inconsistent with the provisions of this subpart adjudicatory hearings shall be conducted in accordance with the provisions of §§ 491.83 through 401.88 (including § 401.86 *et seq.*).

#### **§ 401.95 Assessment of a penalty.**

The Executive Director may recommend to the Commission the amount of the penalty to be imposed. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the Commission, the Commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to § 14.17 of the Compact. If it

## Delaware River Basin Commission

## § 401.101

is found that such a violation has occurred, the Commission shall determine the amount of the penalty to be paid.

### § 401.96 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement in lieu of penalty:

(1) Previous violation, if any, of the Commission's Compact and regulations;

(2) Whether the violation was unintentional or willful and deliberate;

(3) Whether the violation caused adverse environmental consequences and the extent of any harm;

(4) The costs incurred by the Commission or any signatory party relating to the failure to comply with the Commission's Compact and regulations;

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that resulted therefrom; and

(6) Whether the failure to comply with the Commission's Compact and regulations was economically beneficial to the violator.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

### § 401.97 Enforcement of penalties.

Any penalty imposed by the Commission shall be paid within 30 days or such further time period as shall be fixed by the Commission. The Executive Director and Commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the Commission in determining a penalty amount shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to § 14.17 of the Compact.

### § 401.98 Settlement by agreement in lieu of penalty.

A possible violator may request settlement of a penalty proceeding by agreement. If the Executive Director determines that settlement by agreement in lieu of a penalty is in the best interest of the Commission, he may submit to the Commission a proposed settlement agreement in lieu of a penalty. No settlement will be considered by the Commission unless the possible violator has indicated to the Commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount within the time period provided. If the Commission determines not to approve a settlement agreement, the Commission may proceed with a penalty action in accordance with this subpart.

### § 401.99 Suspension or modification of penalty.

The Commission may postpone the imposition of a penalty or provide for reconsideration of the penalty amount imposed pending correction of the condition that gave rise to the violation or pending a satisfactory resolution of any adverse consequences that resulted from the violation.

## Subpart H—Public Access to Records and Information

AUTHORITY: Pub. L. 93-502, as amended.

SOURCE: 40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975, unless otherwise noted. Redesignated at 52 FR 37602, Oct. 8, 1987.

### § 401.101 Policy on disclosure of Commission records.

The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.